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7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11
12 CALENDAR RESEARCH LLC, a
13 Delaware limited liability company,

14 Plaintiff,

15 v.

16 MICHAEL HUNTER GRAY, *et al.*,

17 Defendants.
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CASE NO. 2:17-cv-04062-SVW-SS

Discovery Matter
Hon. Suzanne Segal

**DEFENDANT STUBHUB, INC.'S
NOTICE OF REQUEST AND
REQUEST TO DESIGNATE
PORTIONS OF TRANSCRIPT AS
CONFIDENTIAL**

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 7, 2017, Defendant StubHub,
3 Inc. (“StubHub”) will and hereby does request from this Court an Order designating
4 confidential and redacting portions of the parties’ November 3, 2017 Telephonic
5 Hearing transcript that contain highly confidential, proprietary, trade secret
6 information. This Request is based on this Notice, the below Memorandum of
7 Points and Authorities, the supporting declaration of Samuel A. Jacobs, and the
8 Honorable Magistrate Judge Suzanne Segal’s Minute Order Regarding Transcript
9 for November 3, 2017 Hearing (Dkt. 117).

10
11 DATED: December 7, 2017

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

12
13 By 

14 David M. Grable
15 Attorneys for Defendant StubHub, Inc.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Pursuant to the Honorable Magistrate Judge Suzanne Segal's Minute Order
3 Regarding Transcript for November 3, 2017 Hearing (Dkt. 117), Defendant
4 StubHub, Inc. ("StubHub") hereby requests the Court designate confidential and
5 redact portions of the parties' November 3, 2017 Telephonic Hearing transcript that
6 contain highly confidential, proprietary, trade secret material.

7 **I. LEGAL STANDARD**

8 Courts recognize a "general right to inspect and copy public records and
9 documents, including judicial records and documents." *Kamakana v. City & Cty.*
10 *of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner*
11 *Commc'ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Parties seeking to seal judicial
12 records that are "more than tangentially related to the underlying cause of action"
13 bear the burden of overcoming the presumption with "compelling reasons" that
14 outweigh the general history of access and the public policies favoring disclosure.
15 *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1099 (9th Cir.
16 2016); *Kamakana*, 447 F.3d at 1178-79. Courts regularly hold that there is good
17 cause to seal records containing trade secrets and sources of business information
18 which, if disclosed, could "become a vehicle for improper purposes," such as
19 harming a party's competitive standing. *Kamakana*, 447 F.3d at 1179 (quoting
20 *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)); *Ctr. for Auto Safety*,
21 809 F.3d at 1097 ("compelling reasons" for preventing disclosure include the
22 potential disclosure of "sources of business information that might harm a litigant's
23 competitive standing"). In this District, a sealing request must also be "narrowly
24 tailored to seek sealing only of sealable material." Civil L.R. 79-5(b).

25 **II. THE COURT SHOULD DESIGNATE CONFIDENTIAL AND**
26 **REDACT NARROW PORTIONS OF THE HEARING TRANSCRIPT**
27 **RELATED TO PREVIOUSLY SEALED DOCUMENTS AND**
28 **STUBHUB'S TRADE SECRETS**

1 During the parties' November 3, 2017 Telephonic Hearing, StubHub's
2 witness, Rashid Aidun, gave testimony regarding the manner in which the StubHub
3 server code is housed, the manner in which engineering teams are assigned to parts
4 of the server code, the location of and tools used to create server code
5 documentation, the proprietary and security features enabled by the server code, and
6 the particular kinds of personal information susceptible to theft in the event of
7 mishandling of the server code. (November 3, 2017 Hearing Transcript at 8:8-10,
8 9:20-10:6, 10:13-24, 25:5-7; 56:16-23). This testimony was in response to the
9 Court's inquiring further into and repeating paragraph 8 of Mr. Aidun's Declaration
10 in Support of Joint Stipulation (Dkt. 75-16), which was filed under seal. (November
11 3, 2017 Hearing Transcript at 9:14-17; Dkt. 75-16). Later, Plaintiff's expert, Dr.
12 Geoff Cohen, again made references in his testimony to this information.
13 (November 3, 2017 Hearing Transcript at 17:11, 17:17). Additionally, in response
14 to the Court's inquiring into and repeating paragraph 51 of Dr. Cohen's October 30,
15 2017 Declaration in Support of Motion to Compel (*id.* at 18:20-24), which was also
16 filed under seal (Dkt. 90), Dr. Cohen gave testimony regarding material he had seen
17 in the code StubHub produced to Plaintiff pursuant to the Protective Order in this
18 case. (November 3, 2017 Hearing Transcript at 19:11-14, 20:21-24, 21:1-2, 21:17-
19 20). And lastly, in response to the Court's inquiring into and repeating paragraph 52
20 of Dr. Cohen's October 30, 2017 Declaration (*id.* at 22:7-9), which was also filed
21 under seal (Dkt. 90), Dr. Cohen again gave testimony regarding material he had seen
22 in the code StubHub produced to Plaintiff pursuant to the Protective Order in this
23 case, which was later repeated by Plaintiff's counsel. (November 3, 2017 Hearing
24 Transcript at 22:22-23:7, 40:11-14). Mr. Aidun and StubHub's counsel were then
25 compelled to respond with material they had seen in StubHub code, which
26 Plaintiff's counsel later repeated, as well as what code had been produced. (*Id.* at
27 26:1-4, 26:22-27:4, 33:3-9, 36:9-13; 49:16-19, 50:12; 68:17-18).

1 At the outset, StubHub respectfully requests that the Court uphold its prior
 2 rulings on sealing paragraph 8 of Mr. Aidun's Declaration and paragraphs 51 and 52
 3 of Dr. Cohen's Declaration (Orders Granting Applications to File Under Seal, Dkts.
 4 84 and 94). The Court previously found good cause to seal these Declaration
 5 paragraphs, and that same good cause should extend to the under seal paragraphs
 6 being read into and discussed on the record during the telephonic hearing.
 7 (November 3, 2017 Hearing Transcript at 9:13-17, 18:20-24, 22:7-9).

8 Mr. Aidun's Declaration was designated HIGHLY CONFIDENTIAL –
 9 SOURCE CODE¹ pursuant to the Protective Order, and paragraph 8 was deemed
 10 worthy of sealing by the Court, because the Declaration described features of
 11 StubHub's online ticket marketplace that the StubHub server code enabled, the
 12 functions served by the StubHub server code, and the procedures employed to
 13 prevent the disclosure of the StubHub server code. This information is highly
 14 sensitive, proprietary, trade secret material that is maintained in confidence, the
 15 disclosure of which would provide StubHub's competitors with nonpublic, technical
 16 information that goes to the core of the StubHub mobile application. Dr. Cohen's
 17 Declaration was also designated HIGHLY CONFIDENTIAL – SOURCE CODE
 18 pursuant to the Protective Order, and paragraphs 51 and 52 were deemed worthy of
 19 sealing by the Court, because the Declaration recounted what was found in the code
 20

21 ¹ The Protective Order defines "HIGHLY CONFIDENTIAL – SOURCE
 22 CODE" information or items as "extremely sensitive 'CONFIDENTIAL
 23 Information and Items' representing computer code and associated comments and
 24 revision histories, formulas, engineering specifications, and schematics that define
 25 or otherwise describe in detail the algorithms or structure of software or hardware
 26 designs, the disclosure of which to another Party or Non-Party would create a
 27 substantial risk of serious harm that could not be avoided by less restrictive means."
 28 (Dkt. 54 at ¶ 2.10). Furthermore, the "protections conferred by this Protective Order
 cover not only Protected Material...but also...any information copied or extracted
 from Protected Material." (*Id.* at ¶ 3).

1 produced by StubHub. StubHub's code is highly sensitive, proprietary, trade secret
2 material that is vigorously protected, and its disclosure would reveal nonpublic,
3 technical information that goes to the core of the StubHub mobile application,
4 resulting in competitive harm to StubHub. These justifications have not changed,
5 and StubHub requests that the Court uphold its prior findings that this material is
6 confidential and worthy of redaction.

7 Furthermore, StubHub respectfully requests that the answers elicited by
8 inquiring into and repeating these under seal Declaration paragraphs be treated in
9 the same manner to the extent they covered the same material. Mr. Aidun's
10 responses (and to the extent they were repeated or responded to by others) to the
11 Court's questioning regarding paragraph 8 of his Declaration touched on the same
12 highly sensitive, proprietary, trade secret information regarding the features enabled
13 by StubHub's server code, the contents of the StubHub server code, and the manner
14 in which StubHub's server code is maintained, as well as the personally identifiable
15 and financial information susceptible to theft if the server code were mishandled.
16 (November 3, 2017 Hearing Transcript at 8:8-10, 9:20-10:6, 10:13-24, 17:11, 17:17,
17 25:5-7; 56:16-23). Courts regularly find good cause to seal records containing such
18 information (*Kamakana*, 447 F.3d at 1179; *Ctr. for Auto Safety*, 809 F.3d at 1097)
19 and the Protective Order in this case deems such descriptions of code and
20 information derived from code confidential (Dkt. 54 ¶¶ 2.10, 3). The same goes for
21 Dr. Cohen's responses (and to the extent they were repeated or responded to by
22 others) to the Court's questioning regarding paragraphs 51 and 52 of his Declaration
23 which rehashed what he had seen in StubHub's produced code. (November 3, 2017
24 Hearing Transcript at 19:11-14, 20:21-24, 21:1-2, 21:17-20, 22:22-23:7, 26:1-4,
25 26:22-27:4, 33:3-9, 36:9-13; 40:11-14, 49:16-19, 50:12; 68:17-18). StubHub
26 therefore requests this material also be designated confidential and redacted.

27 **III. CONCLUSION**

28

1 For the foregoing reasons, StubHub respectfully requests that the Court order
2 the following narrowly tailored portions of the telephonic hearing transcript be
3 designated confidential and redacted²:

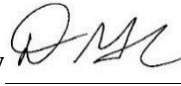
- 4 • 8:8-10
- 5 • 9:13-17
- 6 • 9:20-10:6
- 7 • 10:13-24
- 8 • 17:11
- 9 • 17:17
- 10 • 18:20-24
- 11 • 19:11-14
- 12 • 20:21-24
- 13 • 21:1-2
- 14 • 21:17-20
- 15 • 22:7-9
- 16 • 22:22-23:7
- 17 • 25:5-7
- 18 • 26:1-4
- 19 • 26:22-27:4
- 20 • 33:3-9
- 21 • 36:9-13
- 22 • 40:11-14
- 23 • 49:16-19
- 24 • 50:12

25
26 ² For the Court's convenience, StubHub has filed under seal a highlighted
27 version of the transcript indicating the portions StubHub seeks to designate
28 confidential and redact as Exhibit A to the Declaration of Samuel A. Jacobs filed
herewith.

- 56:16-23
- 68:17-18

DATED: December 7, 2017

QUINN EMANUEL URQUHART &
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By 

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Attorneys for Defendant StubHub, Inc.